No. 01-780

In The

Supreme Court of the United States

WILLIAM H. WRIGLEY,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

Supreme Court, U.S.
FILED
OCT 25 2001
OFFICE OF THE CLERK

On Petition For Writ Of Certiorari
To The Court Of Appeals
Of The State Of Georgia

PETITION FOR WRIT OF CERTIORARI

ROBERT W. CHESTNEY
Counsel of Record
THE CHESTNEY-HAWKINS LAW FIRM
448 East Paces Ferry Rd.
Atlanta, GA 30305
(404) 816-8777

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

11/29/01 THU 17:32 FAX 402 342 5440 COCKLE PRINTING 004
2pp

QUESTIONS PRESENTED

I. WHETHER IT IS FLATLY CONTRARY TO THIS COURT'S BINDING PRECEDENT IN *CITY OF INDIANAPOLIS V. EDMOND*, FOR AN APPELLATE COURT TO DETERMINE THE PURPOSE OF AN INDIVIDUAL POLICE CHECKPOINT TO BE CONSTITUTIONALLY PERMISSIBLE, BASED SOLELY ON THE BELIEF OF A FIELD OFFICER ACTING AT THE SCENE, DESPITE EVIDENCE THAT THE CHECKPOINT WAS PART OF A GENERAL CRIME CONTROL PROGRAM.

II. WHETHER A CONFLICT AMONG THE DECISIONS OF APPELLATE COURTS OF THE DIFFERENT STATES, IN THE APPLICATION OF *EDMOND* TO NEARLY IDENTICAL FACTS, SHOULD BE RESOLVED BY THIS COURT.

11/29/01 THU 17:32 FAX 402 342 5440 COCKLE PRINTING 005

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	4
I. THE GEORGIA COURT OF APPEALS' DECISION IS FLATLY CONTRARY TO THIS COURT'S CONTROLLING PRECEDENT IN *CITY OF INDIANAPOLIS V. EDMOND*	4
A. THE COURT OF APPEALS' DECISION IGNORES THIS COURT'S HOLDING THAT CHECKPOINTS CANNOT BE SET UP AS PART OF A PROGRAM WHOSE PRIMARY PURPOSE IS GENERAL CRIME CONTROL	4
B. A POTENTIALLY PERMISSIBLE *SECONDARY* PURPOSE OF THE ISOLATED CHECKPOINT DOES NOT UNDERCUT THE IMPERMISSIBLE PRIMARY PURPOSE OF THE CHECKPOINT PROGRAM	6
II. THE CONFLICT AMONG STATE COURTS REGARDING THE APPROPRIATE APPLICATION OF *EDMOND* TO NEARLY IDENTICAL FACTS SHOULD BE RESOLVED	7
CONCLUSION	9

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 006

TABLE OF CONTENTS – Continued

Page

APPENDIX A .....App. 1

APPENDIX B.....App. 13

APPENDIX C.....App. 14

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 007

TABLE OF AUTHORITIES

Page

U.S. Supreme Court Cases

Arkansas v. Sullivan, ___ U.S. ___, 121 S.Ct. 1876 (2001) 10

Chandler v. Miller, 520 U.S. 305, 117 S.Ct. 1295 (1997) 6

City of Indianapolis v. Edmond, 531 U.S. 32, 121 S.Ct. 447 (2000) ..... *passim*

Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1291 (1979) 6

Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S.Ct. 2481 (1990) 6

State Court Cases

Burns v. Commonwealth, 541 S.E.2d 872 (Va. 2001) 8

Davis v. State, 788 So.2d 1064 (Fla. 2001) 7, 8, 9

Commonwealth v. Yadstrop, 768 A.2d 318 (Pa. 2001), *aff'g* 738 A.2d 1059 (1999) 8

People v. McIntosh, 738 N.E.2d 787 (N.Y. 2000), *rev'd* 755 N.E.2d 329 (2001) 9

State v. Cardenas-Alvarez, 25 P.3d 225 (N.M. 2001), *aff'g* 995 P.2d 492 (1999) 8

State v. Lidster, 747 N.E.2d 419 (Ill. 2001) 8

State v. Orr, 745 N.E.2d 1036 (Ohio 2001) 8, 9

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 008

PETITION FOR A WRIT OF CERTIORARI

The Georgia Court of Appeals handed down an opinion in the instant case that flatly disregards this Court's decision in *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000). Accordingly, this Court should accept this petition and summarily vacate or reverse the decision of the Georgia Court of Appeals.

OPINIONS BELOW

The opinion of the Georgia Court of Appeals is reported at *Wrigley v. State*, 248 Ga.App. 387, 546 S.E.2d 794 (2001), and attached as Appendix A of this Petition.

The denial of Wrigley's petition for certiorari by the Georgia Supreme Court is attached as Appendix B of this Petition.

The denial of Wrigley's Motion for Reconsideration by the Georgia Supreme Court is attached as Appendix C of this Petition.

JURISDICTION

The judgment of the Georgia Court of Appeals was entered on March 2, 2001. See *Wrigley v. State*, 248 Ga.App. 387, 546 S.E.2d 794 (2001). Petitioner filed a timely petition for certiorari in the Georgia Supreme Court, which petition was denied on July 16, 2001 (See Appendix B). Petitioner timely moved the Georgia Supreme Court to reconsider his petition for certiorari, and the Court denied said motion on July 27, 2001 (See

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 009

Appendix C). This petition for a writ of certiorari is filed within the allowable ninety (90) days, and the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On May 8, 1997, the City of Atlanta Police Department was conducting "Operation Street Sweep," a program targeted at various neighborhoods around the city, the purpose of which was described by the Georgia Court of Appeals as "cleaning the streets of crime." *Wrigley v. State*, 546 S.E.2d 794, 797 (2001). This program involved a series of roadblock and checkpoint operations, set up at several different locations where Red Dog units, narcotics and vice squads, and patrol officers stopped traveling vehicles. At the location selected on Buford Highway, the checkpoint was conducted by the motorcycle squad.

11/29/01 THU 17:33 FAX 402 342 8440 COCKLE PRINTING 010

There were approximately twenty officers at this checkpoint. Petitioner was stopped at this checkpoint on Buford Highway, and was ultimately arrested for DUI.

Petitioner challenged the constitutionality of the checkpoint through a pretrial motion, but this motion was denied. At trial, a jury found Petitioner guilty of DUI and driving without a license on his person. Petitioner appealed his conviction to the Georgia Court of Appeals on several grounds, including the unconstitutionality of the checkpoint. Petitioner cited this Court's holding in *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000), which had been decided after his conviction, for the proposition that a checkpoint program conducted for the general purpose of crime control is proscribed by the Fourth Amendment. The Court of Appeals upheld Petitioner's conviction and the denial of his motion to suppress, finding that the overall program, Operation Street Sweep, was "aimed at cleaning the streets of crime," but that the conduct taking place at the Buford Highway checkpoint, standing alone from Operation Street Sweep, was constitutionally permissible. *Wrigley v. State*, 248 Ga.App. 387, 546 S.E.2d 794 (2001), Division 2. Mr. Wrigley sought to appeal this holding to the Georgia Supreme Court, but the Supreme Court denied his petition for a writ of certiorari. Due to the important federal constitutional question involved in this case, as well as the Court of Appeals' disregard of this Court's decision in *Edmond*, Mr. Wrigley petitions this Court for a writ of certiorari.

11/29/01 THU 17:34 FAX 402 342 5440 COCKLE PRINTING 011

REASONS FOR GRANTING THE PETITION

I. THE GEORGIA COURT OF APPEALS' DECISION IS FLATLY CONTRARY TO THIS COURT'S CONTROLLING PRECEDENT IN *CITY OF INDIANAPOLIS V. EDMOND*.

A. THE COURT OF APPEALS' DECISION IGNORES THIS COURT'S HOLDING THAT CHECKPOINTS CANNOT BE SET UP AS PART OF A PROGRAM WHOSE PRIMARY PURPOSE IS GENERAL CRIME CONTROL.

In *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000), decided while Wrigley's direct appeal was pending, this Court held that a checkpoint program set up for the general purpose of crime control is unconstitutional. The Georgia Court of Appeals found that the subject checkpoint was part of "Operation Street Sweep . [which] was a department-wide program aimed at cleaning the streets of crime." *Wrigley*, 546 S.E.2d at 797. This operation was aimed at the general interest in crime control, precisely the type of program disapproved by this Court to justify suspicionless checkpoints. *Edmond*, 531 U.S. at 39. Nevertheless, the Court of Appeals held that, "standing alone, the roadblock in this case was proper." *Wrigley*, 546 S.E.2d at 797. In spite of its acknowledgment that the aim of the overall program was general crime control, the Court of Appeals determined, based on the conclusion of one field officer participating in the roadblock, that the purpose of the individual roadblock was "checking for licenses and insurance cards." *Id.* The only evidence of this "purpose" was the testimony of the one field officer.

11/29/01 THU 17:34 FAX 402 342 8440 COCKLE PRINTING 012

Rather than focus its determination of the purpose of Operation Street Sweep at the programmatic level, as required by this Court in *Edmond*, the Court of Appeals relied solely on the opinion of the one field officer who testified. This method of inquiry was specifically condemned by this Court: "[W]e caution that the purpose inquiry in this context is to be conducted only at the programmatic level, and is not an invitation to probe the minds of individual officers acting at the scene." *Edmond*, 531 U.S. at 48. Thus, the Court of Appeals ignored this Court's direction, and refused to recognize the unconstitutionality of the checkpoint program in the instant case.

The Court of Appeals also noted that the *actions* of the officers at the roadblock were consistent with the "purpose" of checking licenses. *Wrigley*, 346 S.E.2d at 797. However, the actual conduct of the officers at the Buford Highway roadblock is an irrelevant factor in determining the primary purpose of the program. This Court has instructed lower courts to examine the underlying purpose of the roadblock program itself, even where the conduct of the individual officers at the roadblock, on its face, may appear perfectly proper. As stated by Justice O'Connor, writing for the majority, "[A] program driven by an impermissible purpose may be proscribed while a program impelled by licit purposes is permitted, even though the challenged conduct may be outwardly similar." *Edmond*, 531 U.S. at 47. Thus, a checkpoint program whose primary purpose is general crime control, where officers appear to be only checking licenses and insurance, is unconstitutional based on its impermissible programmatic purpose.

11/29/01 THU 17:34 FAX 402 342 5440 COCKLE PRINTING 013

B. A POTENTIALLY PERMISSIBLE *SECONDARY* PURPOSE OF THE ISOLATED CHECKPOINT DOES NOT UNDERCUT THE IMPERMISSIBLE PRIMARY PURPOSE OF THE CHECKPOINT PROGRAM.

In general, a search or seizure is ordinarily unreasonable in the absence of individualized suspicion or wrongdoing. *Chandler v. Miller*, 520 U.S. 305, 308, 117 S.Ct. 1295, 1298 (1997). This Court has suggested, in *Delaware v. Prouse*, 440 U.S. 648, 661, 99 S.Ct. 1291, 1304 (1979), that the "general interest in crime control" is not a justification for a "regime of suspicionless stops." This Court explained that, where officers are employing a checkpoint for the ordinary enterprise of investigating crimes, there is no reason to suspend the usual requirement of individualized suspicion. *Id.*

One field officer who participated in the Buford Highway checkpoint testified that his roadblock was conducted by the motorcycle squad and the DUI countermeasures team. Therefore, after ignoring the programmatic purpose of the operation, the Court of Appeals concluded that the presence of the DUI countermeasures team suggested "at least a secondary purpose of detecting drunk drivers," and, therefore, held the roadblock permissible. *Wrigley*, 546 S.E.2d at 797. This Court has, indeed, held that a checkpoint program set up for the *primary* purpose of traffic safety or detecting drunk drivers is permissible, so long as the roadblock operates under proper procedures. *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481 (1990); *see also Prouse*, 440 U.S. at 663. However, in *Edmond*, this Court specifically stated that a lawful *secondary* purpose could not

11/29/01 THU 17:34 FAX 402 342 5440 COCKLE PRINTING 014

justify an unlawful roadblock program whose primary purpose is general crime control. *Edmond*, 531 U.S. at 46. Justice O'Connor noted that, if officers were able to justify an impermissible crime control roadblock by citing its proper secondary purpose, "law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check." *Id.* The Operation Street Sweep program is exactly the type of program about which this Court warned in *Edmond*.

II. THE CONFLICT AMONG STATE COURTS REGARDING THE APPROPRIATE APPLICATION OF *EDMOND* TO NEARLY IDENTICAL FACTS SHOULD BE RESOLVED.

Two months prior to the Court of Appeals decision in the instant case, the Florida Court of Appeals handed down an opinion in *Davis v. State*, 788 So.2d 1064 (Fla. App. 2001), a case strikingly similar to the instant case. However, the Florida Court of Appeals held exactly the opposite of the Georgia Court of Appeals, basing its opinion on this Court's *Edmond* decision.

In *Davis*, the roadblock in question was set up as part of "Operation Safe Streets", a program in Tampa, Florida designed to "restore a sense of safety to the neighborhood by lessening the hazardous element associated with criminal activity." *Id.* at 1064. Like the instant case, "the trial court did not have the benefit of the *Edmond* decision at the time of the suppression hearing." *Id.* Also, like the instant case, a police officer participating in the roadblock testified at the motions hearing that the checkpoint was

11/29/01 THU 17:35 FAX 402 342 5440 COCKLE PRINTING 015

one component of an overall crime prevention operation, and was set up to check driver's licenses and registration. *Id.*

Unlike the instant case, the Florida Court of Appeals recognized that the appropriate purpose inquiry in this context was to be conducted at the programmatic level. *Id.* That court properly refused to "probe the minds of individual officers acting at the scene" in determining the purpose of the roadblock, and held that because the roadblock program was created to engage in general crime control, the roadblock was impermissible in accordance with *Edmond*. Thus, the Florida court correctly concluded that, despite the fact that the officers were checking licenses at the scene, the larger effort was "nothing more than a checkpoint program with a primary purpose 'to detect evidence of ordinary criminal wrongdoing.'" *Davis*, 788 So.2d at 1065.

Other states have examined roadblock scenarios since *Edmond*, applying the holding set out by this Court: *State v. Cardenas-Alvarez*, 25 P.3d 225 (N.M. 2001), *aff'g* 995 P.2d 492 (N.M. 1999) (border checkpoint approved); *State v. Lidster*, 747 N.E.2d 419 (Ill. App. 2001) (roadblock set up to seek information about a week-old hit-and-run was unconstitutional under *Edmond*); *Burns v. Commonwealth*, 541 S.E.2d 872 (Va. 2001) (roadblock to investigate recent murder approved, citing "emergency" exception suggested in *Edmond*); *Commonwealth v. Yastrop*, 768 A.2d 318 (Pa. 2001), *aff'g* 738 A.2d 1059 (N.Y. 2000) (DUI checkpoints upheld, distinguishing *Edmond*); *State v. Orr*, 745 N.E.2d 1036 (Ohio 2001), *aff'g* 729 N.E.2d 383 (2000), *cert. denied* ___ S.Ct. ___, 2001 (No. 01-253 U.S. Ohio) (Oct. 15, 2001) (system of driver's license checkpoints approved,

11/29/01 THU 17:35 FAX 402 342 5440 COCKLE PRINTING 016

citing dictum in *Edmond*); *People v. McIntosh*, 738 N.E.2d 787 (N.Y. 2000), *rev'd* 755 N.E.2d 329 (N.Y. 2001) (boarding bus and requesting identification akin to checkpoint, disapproved for purpose of drug interdiction, citing *Edmond*). However, only the *Davis* case, cited above, was decided on facts virtually identical to the case at bar. Although the Ohio Supreme Court upheld license checkpoints in *State v. Orr*, 745 N.E.2d 1036 (Ohio 2001), that case involved a program that was specifically designed "to identify and remove unlicensed drivers and drivers with suspended licenses from the roads." In contrast, the programs in both this case and in *Davis* were designed primarily for crime interdiction.

The importance of the resolution of conflicting interpretations by the state appellate courts on federal constitutional issues is a circumstance which especially invokes the "refereeing" and judicial policy-setting functions for which the writ of certiorari was designed.

CONCLUSION

The Georgia Court of Appeals has decided an important federal constitutional question in a way that conflicts with this Court's decision that roadblocks set up for the general purpose of crime control are unconstitutional. "Because the [Georgia Court of Appeals] decision is flatly contrary to this Court's controlling precedent, [this Court should] grant the [Petitioner's] petition for a writ of certiorari, and reverse" the decision of the Georgia Court

11/29/01 THU 17:35 FAX 402 342 5440 COCKLE PRINTING 017

of Appeals. *Arkansas v. Sullivan*, ___ U.S. ___, 121 S.Ct. 1876, 1878 (2001).

Respectfully submitted,

ROBERT W. CHESTNEY
Counsel for Petitioner

THE CHESTNEY-HAWKINS LAW FIRM
448 East Paces Ferry Road
Atlanta, Georgia 30305
(404) 816-8777

11/29/01 THU 17:35 FAX 402 342 8440 COCKLE PRINTING 018

APPENDIX A

IN THE COURT OF APPEALS OF GEORGIA

FIRST DIVISION
POPE, P.J.,
MILLER and MIKELL, JJ.

March 2, 2001

A00A2363. WRIGLEY v. THE STATE. P-094C

POPE, Presiding Judge.

William H. Wrigley appeals from his conviction on one count of driving without a license on his person and one count of driving under the influence. We affirm.

In the early hours of May 8, 1998, the Motorcycle Squad of the City of Atlanta Police Department set up a roadblock on Buford Highway as a part of "Operation Street Sweep." At around midnight, Wrigley's car stopped at the roadblock, where he was approached by Officer David Curtis Johnson. When Officer Johnson asked Wrigley for his license and insurance card, Wrigley was unable to produce his license and appeared to have difficulty locating his insurance card. Officer Johnson also detected an odor of alcohol on Wrigley and noticed that he had bloodshot eyes, a flushed face, and slurred speech and was unsteady on his feet. Wrigley admitted that he had been drinking.

Officer Johnson then asked Officer G.W. Garrison, a member of the DUI countermeasures team, for assistance in administering the field sobriety tests. As a member of the countermeasures team, Officer Garrison had specialized DUI and intoxilyzer training. Officer Garrison

11/29/01 THU 17:36 FAX 402 342 5440 COCKLE PRINTING 020

also smelled alcohol on Wrigley's person and observed that his eyes were bloodshot and dark and that his speech was impaired. He led Wrigley through the horizontal gaze nystagmus (HGN) test, the nine-step walk and turn test, and the one-leg stand test. Based upon these tests Officer Garrison determined that Wrigley was intoxicated to the extent that he was a less safe driver. Wrigley was placed under arrest.

1. Wrigley first asserts that the trial court erred in denying his motion in limine to exclude all evidence from the roadblock. Wrigley argues that the roadblock was illegal because there was no evidence that the screening officers were properly trained.

The Georgia Supreme Court has determined that a roadblock is constitutional where it meets the following five factors:

> A roadblock is satisfactory where [1] the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field; [2] all vehicles are stopped as opposed to random vehicle stops; [3] the delay to motorists is minimal; [4] the roadblock operation is well identified as a police checkpoint; and [5] the "screening" officer's training and experience are sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication.

LaFontaine v. State, 269 Ga. 251, 253 (3), (497 SE2d 367) (1998). These factors are not "absolute criteria" that a roadblock must meet in order to be considered legitimate. *Heimlich v. State*, 231 Ga. App. 662, 663 (500 SE2d 388) (1998). "Rather, this Court looks to the totality of the

11/29/01 THU 17:36 FAX 402 342 5440 COCKLE PRINTING 021

circumstances surrounding the roadblock to determine whether the factors were satisfied." *Albert v. State*, 236 Ga. App. 146, 148 (1), (511 SE2d 244) (1999).

Here, Wrigley does not dispute that the first four factors were met. But he challenges the fifth factor, the training of the screening officers participating in the roadblock. The evidence showed that Officer Johnson was a ten-year veteran of the Atlanta Police Department. He testified that he had received training in DUI detection at the police academy when he first became a police officer and at several of the annual in-service training sessions he had attended over ten years. In addition, he said that he had "on-the-job training" dealing with intoxicated people, making, on average, one DUI arrest per month, which he calculated to be over 100 arrests over ten years. We find that this experience and training was more than sufficient to qualify Officer Johnson to screen for motorists who should be given field sobriety tests. *State v. Sherrill*, Case No. A00A2063, slip. op. at p. 5 (February 16, 2001); *State v. Golden*, 171 Ga. App. 27, 30 (2), (318 SE2d 693) (1984).

And although no evidence was presented regarding the specific qualifications of the 19 other screening officers participating in the roadblock, the record shows that DUI training for officers in the Atlanta Police Department generally begins in the police academy and continues periodically through the department's annual in-service training program. The record also reflects that each officer was a member of the motorcycle squad, a traffic unit that deals with the driving public. From the evidence presented, we can reasonably infer that the other officers

11/29/01 THU 17:36 FAX 402 342 5440 COCKLE PRINTING 022

were also sufficiently qualified to serve as screening officers.

Accordingly, viewing the roadblock under the totality of the circumstances, we find no error in the trial court's denial of Wrigley's motion in limine on this ground.

2. Wrigley also asserts that the roadblock was illegal under the U. S. Supreme Court's recent decision holding that checkpoint stops aimed primarily at detecting evidence of ordinary criminal wrongdoing violate the Fourth Amendment. *City of Indianapolis v. Edmond*, ___ U. S. ___, (121 SC 447, 148 LE2d 333) (2000). We disagree.

In *Edmond*, the City of Indianapolis set up a series of six roadblocks with the stated purpose of detecting unlawful drug activity. At each checkpoint, officers stopped a predetermined number of vehicles. Each driver was told that he was being stopped at a drug checkpoint and was asked to produce a license and registration card. The officers also looked for signs of impairment and conducted an open-view examination of the vehicle from the outside. The officers then circled each vehicle with a narcotics-detection dog. Id., 121 SC at 450-451.

The Supreme Court noted that it had upheld brief, suspicionless seizures at highway checkpoints only for limited purposes, such as combating drunk driving and intercepting illegal immigrants at U. S. borders. Id., at 452, citing *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (110 SC 2481, 110 LE2d 412) (1990), and *United States v. Martinez-Fuerte*, 428 U.S. 543 (96 SC 3074, 49 LE2d 1116) (1976). In addition, the Supreme Court previously has suggested that a roadblock for the purpose of verifying

11/29/01 THU 17:36 FAX 402 342 5440 COCKLE PRINTING 023

driver's licenses and vehicle registrations would be permissible. Id., citing *Delaware v. Prouse*, 440 U.S. 648, 663 (99 SC 1391, 59 LE2d 660) (1979). In these cases, the Court recognized that the practice of using the checkpoint was directly connected to the important interests of maintaining highway safety and stemming the flow of illegal immigrants through the country's borders. *Edmond*, 121 SC at 452-453.

But in *Edmond*, the Court found that illegal drug activity did not pose a threat to highway safety similar to that posed by drunk driving and, thus, that the use of a drug checkpoint could not be rationalized in the same terms as a sobriety checkpoint. Id. at 455. Rather, the Court found that the Indianapolis checkpoints were aimed at " 'the general interest in crime control,' " and it declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." (Citation omitted.) Id.

Wrigley argues that because the roadblock in this case was part of Operation Street Sweep, it was aimed at general crime control and not intended for any permissible purpose under *Edmond*. Operation Street Sweep was a department-wide operation aimed at cleaning the streets of crime. Officer Johnson testified that in addition to the roadblock, Operation Street Sweep involved "different operations" by the Red Dog Units and the vice and narcotic units, all occurring at the same time. Although it was part of a larger effort, however, the roadblock itself was conducted only by the motorcycle squad, backed up by the DUI countermeasures team. There is no evidence that any other unit participated. And Officer Johnson

11/29/01 THU 17:37 FAX 402 342 5440 COCKLE PRINTING 024

testified that the primary purpose of the roadblock was checking for driver's licenses and insurance cards. The presence of the DUI countermeasures team also suggests at least a secondary purpose of detecting drunk drivers.

The use of a checkpoint for these purposes has been approved by the Supreme Court, which has acknowledged that these measures serve the states' interest in roadway safety. *Edmond*, 121 SC at 453; *Sitz*, 496 U.S. at 455; *Prouse*, 440 U.S. at 658, 663. Thus, standing alone, the roadblock in this case was proper. And the legitimate purposes of the roadblock were not undercut by the fact that other police units were simultaneously conducting different operations as part of a larger, organized effort. We hold, therefore, that the roadblock in this case met the requirements of the Fourth Amendment.

3. Wrigley next argues that the trial court erred in allowing the state to prosecute him on two counts from two separate accusations without requiring the state to file a motion for joinder.

Following his arrest, Wrigley was issued two uniform traffic citations, charging him with driving without a license and DUI. These citations were numbered 1022853 and 0065849, respectively. On April 21, 1998, the state filed an accusation against Wrigley, containing the same case numbers as the citations.[1] Count 1 of that accusation was entitled Case No. 1022853 and asserted a charge of driving without a license, citing OCGA § 40-5-20. Count 2

---

[1] Wrigley asserts that the state filed a separate accusation charging only one count of DUI on October 2, 1997, but that accusation does not appear in the record.

11/29/01 THU 17:37 FAX 402 342 5440 COCKLE PRINTING 002

of the accusation was entitled Case No. 0065849-2 and asserted the DUI charge. Then on April 28, 1998, the state made another filing setting out Count 1 under Case No. 1022853 and charging Wrigley with driving without a license, citing a different Code section, OCGA § 40-5- 29 (a). The original traffic citations were nolle prossed by the state, as was Count 1 of the April 21 accusation. The state proceeded to trial on Count 1 as set forth in the April 28 filing, and Count 2 as alleged in the original April 21 accusation.

Wrigley argues that the April 28 filing superseded the prior accusation, and because the later filing contained only one count, the state's prosecution should have been limited to that one count. The state argues that the April 28 accusation was an amendment only affecting Count 1 of the prior accusation and leaving Count 2 intact.

Under OCGA § 17-7-71 (f), a prosecutor may amend an accusation at any time prior to trial "to allege or to change the allegations regarding any offense arising out of the same conduct of the defendant which gave rise to any offense alleged or attempted to be alleged in the original accusation." (Emphasis supplied.) Here, the April 28 filing reflected that it related only to Case No. 1022853 and Count 1 of the prior accusation. And the filing simply changed the Code section cited in Count 1 to assert the same charge asserted against Wrigley in the original citation: driving without a license on his person under OCGA § 40-5-29. Under these circumstances, it is clear that the April 28 filing was simply an amendment to Count 1 and had no effect on Count 2 of the original

11/29/01 THU 17:37 FAX 402 342 5440 COCKLE PRINTING 026

accusation. Therefore, the trial court did not err in allowing the trial to proceed on the two counts as amended by the April 28 filing, and no motion for joinder was required. Cf. *Vanorsdall v. State*, 241 Ga. App. 871, 873-874 (2) (a) (528 SE2d 312) (2000) (approving an amendment relating to only one count of the original accusation).

4. Wrigley next argues that the trial court erred in allowing Officer Garrison to testify about the specific conclusions he made from each field sobriety test because it gave the tests "the guise of scientific reliability." He asserts that the officer's testimony should have been limited just to a general conclusion as to Wrigley's sobriety, without reference to any specific conclusions drawn from the individual tests. In support of this argument, Wrigley cites this Court's prior holding that evidence of such tests is admissible without requiring expert testimony as to their scientific reliability. *Hawkins v. State*, 223 Ga. App. 34, 39 (1) (476 SE2d 803 (1996). Citing the Court's statement acknowledging that "physical manifestations of impairment" can be as obvious to a layperson as to an expert, he argues that the officer should have stated what happened and let the jury draw its own conclusions. Id. 223 Ga. App. at 36.

We find no merit to this argument. "A police officer may give opinion testimony as to the state of sobriety of a DUI suspect and whether appellant was under the influence to the extent it made him less safe to drive." (Citations omitted.) *Tanner v. State*, 225 Ga. App. 702 (484 SE2d 766) (1997). Here, Officer Garrison gave his opinion that Wrigley was intoxicated to the extent that he was a less safe driver. He also testified about the factors he considers in administering each of the three field sobriety

11/29/01 THU 17:17 FAX 402 342 5440 COCKLE PRINTING 002

tests and about how Wrigley performed in conjunction with those factors. Through this testimony, Officer Garrison simply explained the basis for his conclusion that Wrigley was intoxicated. Nothing in our opinion in *Hawkins* precludes such testimony. Nor do we agree with Wrigley that in explaining the basis for his own conclusion, Officer Garrison somehow invaded the province of the jury.

And to the extent that such evidence represented expert testimony, it was within the trial court's discretion to determine whether Officer Garrison possessed the requisite learning and experience to testify as an expert. See *Werner v. State*, 246 Ga. App. 677, 680 (3), (___ SE2d ___) (2000). The evidence showed that Officer Garrison was specially trained in the area of DUI detection, had made over 1,000 DUI arrests, and had conducted "thousands" of field sobriety evaluations. We find no error.

5. Wrigley also contends that the trial court erred in admitting similar transaction evidence of his prior DUI conviction because he argues that the state did not establish that the evidence was obtained as the result of a lawful traffic stop. He asserts that the state was unable to demonstrate the legality of the stop because the arresting officer could not recall the specific reason for the stop.

As an initial matter, we note that Wrigley does not contest the admission of this similar transaction evidence under *Williams v. State*, 261 Ga. 640 (409 SE2d 649) (1991), and thus we do not address that issue. Rather, he asserts that the evidence was precluded under the Fourth Amendment.

11/29/01 THU 17:38 FAX 402 342 5440 COCKLE PRINTING 028

The record shows that Wrigley was arrested for DUI in February 1990 by Officer Kema Sawadee Tillman of the Atlanta Police Department. After following Wrigley and observing that he had difficulty holding his head up, Officer Tillman testified that he stopped Wrigley for a traffic offense. He believed that the offense was an improper lane change, but he was not sure. Officer Tillman testified that he remembered the traffic stop because he admired the red Jaguar that Wrigley was driving. After administering a field sobriety test to Wrigley, Officer Tillman charged him with DUI. Wrigley pled nolo contendere. Wrigley raised no objection to the traffic stop in the prior proceeding and, by pleading nolo contendere, waived any defenses and objections except whether he voluntarily entered the plea and whether it was accepted after proper inquiry by the trial court. *Wilson v. State*, 240 Ga. App. 681, 682 (523 SE2d 613) (1999). Therefore, Wrigley has waived his right to contest the admission of this similar transaction evidence on the ground that the initial stop was improper.[2]

But even assuming that Wrigley had not waived the right to raise the issue in this proceeding, the evidence would still be admissible. Although Officer Tillman could not remember the details of the stop after so long a time, he testified that he stopped Wrigley only after observing

---

[2] In addition, Wrigley's nolo contendere plea distinguishes this case from the authority upon which he relies. In each of the cases cited, the prosecution was attempting to introduce evidence of crimes as to which either the defendant had either not been charged or as to which the charges were still pending. *U.S. v. Hill*, 898 F2d 72 (7th Cir. 1990); *U.S. v. Lego*, 855 F2d 542 (8th Cir. 1988); *U.S. v. Renteria*, 625 F2d 1279 (5th Cir. 1980).

11/29/01 THU 17:38 FAX 402 342 5440 COCKLE PRINTING 029

a traffic violation. Once a traffic violation occurred, the officer had grounds to make a traffic stop, precluding any argument that the stop was pretextual:

> The United States Supreme Court has held . . . that when an officer sees a traffic offense occur, a resulting traffic stop does not violate the Fourth Amendment even if the officer has ulterior motives in initiating the stop, and even if a reasonable officer would not have made the stop under the same circumstances. See *Whren v. United States*, 517 U.S. [806] (116 SC 1769, 135 LE2d 89) (1996). In other words, if the driver of a stopped car has broken a traffic law, no matter how relatively minor, a motion to suppress evidence can no longer be based on the argument that the stop was pretextual – at least under federal law. [Cits.]

Brantley v. State, 226 Ga. App. 872, 873 (1) (487 SE2d 412) (1997).

6. Wrigley further asserts error in the following regarding the HGN test:

> HGN is based on the well-known and medically accepted principle that nystagmus can be caused by the ingestion of alcohol. HGN test is an accepted common procedure that has reached a state of verifiable certainty in the scientific community, and is admissible as a basis upon which an officer can determine that a driver is impaired by alcohol.

Wrigley contends that this charge is improper because it gave the evidence undue weight in the jury's eyes.

But this Court has previously rejected a similar argument. In *Waits v. State*, 232 Ga. App. 357, 360 (3) (501 SE2d

11/29/01 THU 17:38 FAX 402 342 8440 COCKLE PRINTING 030

870) (1998), the Court approved substantially the same charge, finding that it did not express any opinion by the trial court, but rather correctly set forth the prior holding in *Hawkins v. State*, 223 Ga. App. at 38 (1). We see no reason to disturb that finding.

And we find that the cases from other jurisdictions cited by Wrigley are factually distinguishable. See *Crawford v. Virginia*, 33 Va. App. (534 SE2d 332) (2000) (holding improper a charge stating that "DNA testing is deemed to be reliable scientific evidence in Virginia when admitted to prove the person's identity"); *O'Connell v. Texas*, 17 SW3d 746 (Tex. App. 2000) (disapproving charge instructing the jury that the trial court had taken judicial notice "of the fact that the underlying theory of the Horizontal Gaze Nystagmus (HGN) test is sufficiently reliable" and of the fact that the technique for administering the test is "a reliable indicator of intoxication").

Judgment affirmed. Miller and Mikell, JJ., concur.

11/29/01 THU 17:38 FAX 402 342 5440 COCKLE PRINTING 031

APPENDIX B

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: July 16, 2001

Robert W. Chestney
THE CHESTNEY-HAWKINS LAW FIRM
448 East Paces Ferry Road
Atlanta GA 30305

Case No. S01C0955

WILLIAM H. WRIGLEY v. THE STATE

COURT OF APPEALS CASE NO. A00A2363

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sherie M. Welch, Clerk

11/29/01 THU 17:39 FAX 402 342 5440 COCKLE PRINTING 032

APPENDIX C

SUPREME COURT OF GEORGIA

Case No. S01C0955 Atlanta, July 27, 2001

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

WILLIAM H. WRIGLEY v. THE STATE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Sherie M. Welch, Clerk

11/29/01 THU 17:39 FAX 402 342 5440 COCKLE PRINTING